

## **Brown v. Board of Education**

### **National Historic Site**

What makes history? Usually, it is an unforgettable moment, a fulcrum upon which other events turn. Most often, recorded history is the story of those who won battles, reached finish lines first, or invented surprising mechanical marvels. Generally, it is what is remembered of heroic human deeds. But there are other histories too—histories filled with suffering and loss, small personal stories that don't make the newspapers, and the accumulations of daily actions that eventually build sufficient momentum to redirect the course of human lives. *Brown v. Board of Education*, the 1954 United States Supreme Court decision that legally ended segregation in public schools, was the result of such histories, accumulated week by week, month by month, decade by decade until what had been the status quo transformed into a bright new birth of equality. This lawsuit and its outcome owe a great debt to the many men and women who have struggled for freedom since their feet first touched the soil of the Americas. The decision reached by the Supreme Court in *Brown v. Board of Education* forever changed the way Americans view equality.

How far back do the stories begin? Do historians pinpoint Reconstruction, when the intent of the Thirteenth Amendment (outlawing slavery) only briefly and incompletely found expression in the war-ravaged South? Or do they look further afield to pre-Civil War conditions when many guessed that violence was inevitable? Or are the first stirrings found in the post-cotton gin days when this revolutionary invention expanded the reach of plantation owners, enabling them to seed more lands and enslave more people. Perhaps the origins of *Brown* range even further back to the seventeenth century, when the last gasp of the Age of Exploration opened the New World to the imposition of Old World values and set the template for the “peculiar institution” that became Southern plantation life. From the time when enslaved people first arrived on American shores and for the next three centuries, the people of North America have wrestled with questions of equality.

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It may seem a long jump from colonial America to 1954, but the seeds of *Brown* first were planted in that distant time. Slavery pushed the United States toward the Civil War. Attempts to create a legal basis for equality after the war, with the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, resulted in harsh reactions on the local level that aimed to disenfranchise and repress the newly freed people. This repression in turn inspired African Americans to organize and fight for equality.

### **Plessy v. Ferguson**

*Plessy v. Ferguson*, the 1896 Supreme Court decision, helped institutionalize the color line. With *Plessy*, Louisiana's African American citizenry called attention to the erosion of freedoms granted during post-Civil War years by the Constitution's Fourteenth and Fifteenth Amendments. Those halcyon days when skin color did not determine who could vote and where children might attend school lasted only as long as the federal government posted an army in the South to ensure compliance. When the Army of the Potomac withdrew in 1877, southern politicians moved to again marginalize African Americans. They created poll taxes, literacy tests, and cagey primary elections, barring African American voters from the political process. State laws also cut off public amenities. Railroad cars, drinking fountains, waiting rooms, public toilets, and other public accommodations became segregated. Race determined where a man or woman might sit down in public; whether or not their interests were regarded as legitimate by the legal system, and, in large part, whether or not the city or county in which they lived treated them with respect. To have enjoyed equality and then to see that equality eroded through incremental changes in conflict with the Constitution stirred people like Homer Plessy to action.

To call public attention to growing inequities, Plessy collaborated with others to bring a case in front of the Supreme Court. Boarding a train out of New Orleans, Plessy seated himself in a car reserved for white passengers and was arrested and removed from the train. When his case reached the Supreme Court, justices appointed for their support of states' rights heard it.

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Justice Henry Billings Brown, who wrote the opinion, considered Plessy's rights under the Fourteenth Amendment, and determined "the object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color." Citing case law not directly applicable to Plessy's circumstances, Brown and six other voting justices upheld separate-but-equal facilities.

As the dissenting voice, John Marshall Harlan disagreed. He wrote: "Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law."

Nevertheless, *Plessy v. Ferguson* established a precedent supported by subsequent Supreme Court decisions. In the years following *Plessy*, opportunities for African Americans continued to decline, particularly in the realm of education. The law of the land supported separate educational facilities for African Americans and whites. Both systems had dedicated teachers. Both had brilliant students. But the law supported the color bar, which supplied African American children with ill-heated shacks, insufficient books, and irregular transportation under the pretense of separate-but-equal educational facilities.

### **Laying the Legal Groundwork**

Among those who demanded an end to this pretense was African American leader W.E.B. DuBois. DuBois, who obtained a doctorate from Harvard, keenly felt the value of education and the need for unity among African Americans. A multiracial group of activists, including DuBois, organized the National Association for the Advancement of Colored People (NAACP) in 1909. As director of publications and research, DuBois edited *The Crisis*, the NAACP's monthly publication, which began with a circulation of 1,000 and ten years later counted more than 100,000. Under DuBois, *The Crisis* educated

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readers on issues pertinent to race relations, compiling accounts of civil and social injustice. It called readers to action and extended an educational agenda to foster better understanding between whites and African Americans.

Early in its history, the NAACP recognized it needed legal representation and established a legal redress department. In 1935 the organization began to maintain a paid legal staff. These attorneys vigilantly selected cases that would move civil rights discussions forward in the courts.

The NAACP lawyers were painfully aware of the court cases that followed *Plessy v. Cumming v. Richmond County Board of Education* (1899), *Berea College v. Kentucky* (1908), and *Gong Lum v. Rice* (1927) reinforced the doctrine of separate but equal. To develop a strategy to challenge these cases, the NAACP hired lawyer Nathan Margold in the 1930s. Margold analyzed case law justifying segregation. He found loopholes and proposed a two-pronged offensive in what became known as the Margold Report: First, attack unequal facilities in states where violations could be substantiated, and second, attack segregation by proving that these states had a history of unequal support for African American schools. The freethinking report challenged future NAACP lawyers to find new ways to fight segregation.

Close on the heels of the Margold Report, Walter White assumed leadership of the NAACP. White had many friends among the powerful political elite in New York and Washington, and he knew how to use them to advance the cause of equality for African Americans. White hired Charles Houston, a Harvard-educated attorney, as the organization's lead counsel. A dean of Howard University School of Law before joining the NAACP, Houston spent several years traveling the South documenting disparity in educational resources before and during his work for the organization. Houston believed that establishing truly equal separate schools eventually would become so burdensome that states would have to end segregation. To take on these cases, Houston hired attorneys such as Thurgood Marshall and Robert Carter. Then assistant special counsel for the

NAACP, Carter recalled that Houston planned to file lawsuits against state universities where they had programs with unequal facilities for African Americans.

Initially, under Houston, the NAACP fought a case-by-case battle that challenged inequalities in higher education. Houston targeted “separate but equal” graduate level education. Houston along with assistant Thurgood Marshall argued *University of Maryland v. Murray* (1935), winning admission for Donald Murray to the University of Maryland’s law school. Likewise, in the Supreme Court case *Missouri ex rel Gaines v. Canada* (1938), Houston challenged Missouri’s policy of sending African American students out of state with scholarships rather than allowing them to attend in-state universities. Case by case, Houston, the lawyers who worked with him, and the plaintiffs who stepped forward to challenge the status quo created precedents for equality laying the legal groundwork for *Brown v. Board of Education*.

### **Activism for Equality**

The experience of African American servicemen in World War II also contributed to activism. They were not only segregated within the services, but also denied training received by white recruits. During the war, expectations grew that the America to which the men returned had somehow changed, had become more equal in its treatment of all citizens. Surely, they reasoned, the United States couldn’t wage war against racists abroad while it condoned lynching at home.

Theirs was a profound analysis that the politicians of the 1940s chose to ignore, though First Lady Eleanor Roosevelt pressured her husband, President Franklin D. Roosevelt, for action on equal rights. Frustrated by the slow rate of national change, A. Philip Randolph, head of the Brotherhood of Sleeping Car Porters, called for a march on Washington to protest African American exclusion from defense industry jobs. He said, “Though I have found no Negroes who want to see the United Nations lose this war, I have found many who, before the war ends, want to see the stuffing knocked out of white supremacy and of empire over subject peoples.” He sounded a challenge that would be preached with ever-greater fervency and frequency by Dr. Martin Luther King, Jr. and other community

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activists as they continued the fight for civil rights in the late 1950s and early 1960s. Randolph declared, “By fighting for their rights now, American Negroes are helping to make America a moral and spiritual arsenal of democracy.”

NAACP membership advanced from 50,000 in 1940 to 450,000 in 1946. Local chapters expanded from 800 in 1939 to 14,000 in 1948. During this period, eighteen states approved legislation calling for an end to discrimination in public accommodations. In addition, NAACP-supported candidates began winning elections as councilmen, receiving appointments as policemen and, overall, dramatically increasing the number of African Americans registered to vote. In their communities, parents began to place pressure on the education system by initiating challenges to racial inequality through local lawsuits.

As Houston resigned from his position in 1940 for health reasons, the NAACP created the Legal Defense and Education Fund and named Marshall as its director and head counsel. Initially, the NAACP continued the strategy Houston had so skillfully honed. Successive cases demonstrated the wisdom of Houston’s approach. *McLaurin v. Oklahoma* (1950) successfully pitted an African American educator against the University of Oklahoma when he registered for a course not offered at the state’s segregated college. *Sweatt v. Painter* (1950) challenged the University of Texas Law School. Heman Marion Sweatt tried to enroll in the school because the state offered no separate law school for African Americans. Only belatedly, Texas rented rooms, first in Houston and then in Austin, passing them off as equivalent to the state university’s law school. Ultimately, the Supreme Court sided with NAACP lawyers against both states. Yet with few funds to conduct protracted legal battles, particularly those that set precedent case by case and state by state, Marshall proposed a new strategy. He advised a direct assault on *Plessy*, using separate but equal requirements of the public education system as the springboard. If the Supreme Court could rule that separate and essentially unequal facilities were inappropriate for universities, then, he felt, a case also could be made for their inappropriateness from kindergarten to high school.

What evolved into a head-on collision with previous legal precedents was part strategy and part grassroots activism. NAACP representatives traveled throughout the country, seeking opportunities to challenge the courts. And, in spite of burdensome conditions and fear of retribution, men and women contacted the NAACP, volunteering to challenge the validity of the separate but equal rulings.

### **Challenging Segregation in Education**

In 1951, in rural Clarendon County, South Carolina, the state spent \$43 per African American child per year for educational resources, while it spent \$179 for white children. In those days, state budgets provided minimal support for African American education. Students learned in schools that were no more than one-room shacks with tarpaper roofs and not enough textbooks to go around.

Approximately 25 percent of Clarendon County's school-age population grew up unable to read and write. Small wonder, when many rural students had no bus to take them to school.

To improve accessibility, Reverend Joseph De Laine, a Clarendon County preacher, proposed that the county provide transportation for African American children as they did for white children. De Laine approached the school board on behalf of parishioners who lived in a frequently flooded portion of the county and whose children sometimes rowed boats to get to school. He asked for a bus to ensure that they got to school safely on a regular basis. When the school board denied his request, De Laine sought out members of his flock willing to sue for educational equity. Levi Pearson, farmer and father of three, agreed to stand with him. Although Pearson thought he was prepared for backlash, even he was surprised. He lost credit at every store and bank in town. When he cut down his trees to obtain money to pay his bills, the local mill refused to pick up the timber. Eventually, the prosecutor for the U.S. District Court discovered that Pearson's farm straddled two school districts. The district where he paid his taxes was not the one where his children attended school, and so the court denied him legal standing. Only one of the

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three judges who heard the case dissented to school segregation. Threats and harassment later forced the judge, Julius Waring, to leave the district.

Still Pearson and De Laine did not give up. The two men found twenty families willing to be plaintiffs and, with the help of local lawyer Harold Boulware and NAACP General Counsel Marshall, pulled together a new suit. Harry Briggs, a gas station attendant whose wife cleaned rooms at the local hotel, was among the first to sign on. Father of five children and a Navy veteran, he was willing to take this risk for his children's future. "There didn't seem to be much danger to it," he said, "but after the petition was signed, I knew it was different." Briggs was fired. So was his wife when she refused to force her husband to remove his name from the petition. In spite of Ku Klux Klan threats, and harassment at home and on the highways, the NAACP, with Marshall as the arguing attorney, filed *Briggs v. Elliott* in the U.S. District Court for the Eastern District of South Carolina in 1950.

Robert Carter spoke of the courage of men like Harry Briggs: "The thing about South Carolina... was that the parents that brought the case had lived in the South and they were subject to a lot of pressure. As a matter of fact, before we took the case, I met with all of them in a church in South Carolina. I told them that what we were doing was fighting segregation, and that they would have to take a little pressure... What I wanted them to understand was that if they didn't feel they could take that kind of pressure, that they should bow out... What shocked me about it was so few people took the opportunity."

Like Reverend De Laine, Sarah Bulah also wanted a bus. The Hockessin, Delaware, mother had grown tired of driving her daughter to school when a bus carrying white children passed her door each day. She began to write letters. She wrote the Department of Public Instruction for Delaware. She wrote the governor. Each time she was ignored, rebuffed, or rebuked, she wrote again. When the state's final letter reminded her that its constitution denied African American children space on buses for whites, she contacted local lawyer Louis Redding, the first and (at that time) only African American lawyer in the state. Bulah recalled that Redding told her he "wouldn't help me get a Jim Crow bus

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to take my girl to any Jim Crow school, but if I was interested in sendin' her to an integrated school, why, then maybe he'd help." Bulah's cause matched the NAACP plan to attack segregation in the schools. *Bulah v. Gebhart* was filed in 1951 at the Delaware Court of Chancery, with NAACP lawyer Jack Greenberg assisting Redding.

At the same time, Redding was also working with African American parents in suburban Claymont, Delaware. The parents were frustrated by their children's twenty-mile roundtrip commute to crowded Howard High School in Wilmington while spacious but segregated Howard High School lay in their community. Their case, *Belton v. Gebhart*, joined with *Bulah v. Gebhart* to sue the Delaware State Board of Education, specifically charging board members such as Francis B. Gebhart of not providing equal facilities.

In Prince Edward County, Virginia, Barbara Rose Johns, sixteen, masterminded a student strike at Robert R. Moton High School. The student body of 450 sided with this young girl, who led a two-week strike protesting inaction on the construction of a new high school and deplorable conditions (including a school bus serving as a classroom) at the current school. Students also approached the local chapter of the NAACP for help. In May 1951 attorneys Spottswood Robinson and Oliver Hill filed *Davis v. County School Board of Prince Edward County* on behalf of 117 students. As with the other cases that combined to form *Brown v. Board of Education*, NAACP lawyers facilitated the suit through the court system. Later, when the Supreme Court ordered desegregation, the County Board of Supervisors refused to appropriate funds, thus effectively closing the county's schools from 1959 to 1964.

In Washington, D.C., barber Gardner Bishop led the effort. Bishop, who had made repeated efforts for integration in the District's schools, encouraged students from Shaw Junior High to protest crowded conditions at their school. He helped them to try to enroll at the new white school, John Phillip Sousa High School, which had empty classrooms. They were denied access and Charles Houston helped the group file *Bolling v. Sharpe* in U.S. District Court. Houston ultimately turned the case over to James Nabrit, Jr., a Howard University law school colleague, because of illness. In his argument, Nabrit

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challenged segregation itself, charging that it was fundamentally illegal. The court dismissed the case on the basis of an earlier Court of Appeals decision that segregated schools were legal in the District of Columbia. Nabrit was appealing the dismissal when he received word of the Supreme Court's interest in combining his case with the other desegregation cases before the Court.

In Topeka, Kansas, many in that Midwestern state capital also stood up against inequality. Lucinda Todd was one of them. For years, she had worked for equal rights as a member of her local NAACP chapter. Following the national initiative, the NAACP Topeka chapter president, McKinley Burnett, enlisted Todd and other NAACP members to challenge separate but equal in the city's educational system. At the beginning of the school year in 1950, Todd and twelve other parents, among them Oliver Brown who was eventually assigned as lead plaintiff, took their children to their neighborhood schools and attempted to enroll them. The district refused admission and offered only the option of sending the children to one of the four African American schools in the city. Local lawyers Charles Bledsoe, Charles Scott, and John Scott, with assistance from Robert Carter and Jack Greenberg of the Legal Defense and Education Fund's headquarters office, filed suit against the Topeka School Board. Their suit, *Oliver L. Brown et al. v. the Board of Education of Topeka (KS)*, was filed in U.S. District Court in February 1951.

### **The Five Cases of *Brown v. Board of Education***

By 1952, *Belton (Bulah) v. Gebhart*, *Briggs v. Elliott*, *Brown v. Board of Education*, *Davis v. County School Board of Prince Edward County*, and *Bolling v. Sharpe* reached the Supreme Court, which rolled them together into one case known as *Brown et al. v. The Board of Education of Topeka et al.* In hearing these as one case, the Supreme Court elevated the issue of segregation from a southern to a national concern. In each litigation, the doctrine of separate but equal went on trial, with the validity of the Fourteenth Amendment at stake. Only in *Bolling v. Sharpe* did the Fourteenth Amendment not directly apply because the District of Columbia lacked statehood. Thus, the Supreme Court included *Bolling v. Sharpe* in the cases it heard, but eventually delivered a separate

opinion related to the Fifth Amendment (due process) and consistent with its decision on *Brown v. Board of Education*.

The initial argument for *Brown* came before Chief Justice Frederick M. Vinson. Vinson, who also had ruled in the *McLaurin* and *Sweatt* cases, led a seriously fragmented Court concerned about alienating the South. Although the Court recognized that it needed to make a ruling and had supported bundling the five court cases into one, the irreconcilable views of the judges caused Vinson to postpone a decision. In the interim, he called on lawyers to provide historical documentation outlining the intent of the framers of the Fourteenth Amendment. Felix Frankfurter, a U.S. Supreme Court justice, drafted five questions that the divided Court approved and that NAACP lawyers were expected to answer by the following year. Frankfurter provided the Court with a stopgap measure that acknowledged the importance of the discussion but postponed a decision that would have been inconclusive. Less than a year later, Vinson died and was replaced by former California governor Earl Warren.

One of the first in line to be seated in the courtroom on December 7, 1953, the day the Supreme Court heard *Brown's* opening arguments, Rev. De Laine told a reporter, "There were times I thought I would go out of my mind because of this case. If I had to do it again, I would. I have a feeling that the Supreme Court is going to end segregation." During the previous six months, scholars had worked to document any possible links between the intent of the Fourteenth Amendment and the apparently contrary decision institutionalized in *Plessy*. When the three-day argument finally opened, NAACP lawyers cited the "broad purpose" of the amendment rather than tying it specifically to educational issues. However, John Davis, representing South Carolina and arguing for states' rights, made a case that constitutionally approved segregation existed because of legislation such as the Freedman's Bureau Bill, which established racially separate schools in the wake of the Fourteenth Amendment.

Other forces also were at work. New research from scientists such as psychologist Louisa Holt and Drs. Kenneth and Marie Clark impacted the Court in a way the states' rights

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arguments could not. Clark demonstrated that segregation negatively impacted childhood development and self-esteem. The Supreme Court also heard arguments from the U.S. District Court case *Briggs v. Elliott*, which, though decided in favor of Elliott, included research that segregation adversely affected young children.

Marshall, the lead attorney for the LDF, effectively summed up his rebuttal to the states' rights, separate-but-equal doctrine that had dominated jurisprudence since the nineteenth century: "I got the feeling yesterday that when you put a white child in a school with a whole lot of colored children, the child would fall apart or something. Everybody knows that is not true. Those same kids in Virginia and South Carolina—and I have seen them do it—they play in the streets together, they play on their farms together, they go down the road together, they separate to go to school, they come out of school and play ball together."

After the legal arguments, thoughtful research, and heady excitement of the hearing, the judges still needed to reach a decision. The decision Warren wrote and that he read almost six months later relied not so much on historical or legal precedent as on the immorality of inequality and the recognition that they were setting a new precedent. On May 17, 1954, the Court's decision on *Brown v. Board of Education* overturned *Plessy v. Ferguson*, the 1896 benchmark opinion institutionalizing "separate but equal" facilities. Setting the nation on a new course, the Court's opinion said, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place."

There were celebrations that day. Parents told children what the Court decision meant. Marshall suggested the decision would end segregation within five years. Washington Post reporter Frank Kent called the opinion "the most important on racial relations since the Supreme Court ruled before the Civil War that Dred Scott, a Negro slave, was not a citizen." Elsewhere, the reception was less positive. Governor Herman Talmadge of Georgia asserted that *Brown* made the Constitution as worthless as a "scrap of paper." Senator Harry F. Byrd of Virginia declared it "the most serious blow that has yet been struck against the rights of the states." However, Howard Odum at the University of

North Carolina, suggested, “The South is likely to surprise itself and the nation and do an excellent job of readjustment.”

And so, with the ruling on *Brown*, “de jure” segregation—segregation mandated by law—heard its death knell. It remained in the years ahead for “de facto” segregation—segregation created by prejudice and stereotyping that leads to diminished opportunities and unequal access—to be fought on all fronts by those who entered political and judicial areas in the 1950s and 1960s, up to today.

## **Brown II**

The Supreme Court delayed action under *Brown* to enable states to determine how best to meet the requirements of the decision. LDF lawyers returned to the Court in 1955 in a subsequent case, referred to as *Brown II*, to establish implementation. The LDF approached the bench with a timetable by which the states should achieve integration. Marshall eloquently argued for a rigid schedule to prohibit states from delaying implementation but did not expect to win. Warren’s opinion in *Brown II*, May 31, 1955, reaffirmed the “fundamental principle that racial discrimination in education is unconstitutional.” It declared that “school authorities have the primary responsibility for elucidating, assessing and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles.” The decision also charged states to move with “all deliberate speed,” a phrase the LDF rightly feared would be used as an opportunity for obstruction.

Nevertheless, for people like Silas Fleming, one of the thirteen Topeka, Kansas, parents, *Brown I* and *Brown II* represented a path out of segregation, “I and my children are craving light, the entire colored race is craving light, and the only way to reach the light is to start out children together in their infancy and they come up together.”

## **Civil Rights Movement**

After *Brown*, conflict was unavoidable. The Supreme Court cracked the wall of segregation, but the crack was not sufficiently wide to alter centuries of inequality.

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President John Kennedy, in theory an advocate for civil rights, had no personal connection with the disenfranchisement caused by the “peculiar institution.” Five days after Kennedy’s funeral, President Lyndon Johnson challenged a joint session of Congress “to enact a civil rights law so that we can move forward to eliminate from this nation every trace of discrimination and oppression that is based upon race or color.” Though the Civil Rights Act passed in 1964, other hurdles lay ahead as the nation slipped into the throes of the Vietnam War and political re-examination.

During these years, African Americans pushed for reform. The Little Rock Nine, the Freedom Riders, Rosa Parks, Dr. Martin Luther King, Jr., Adam Clayton Powell, Malcolm X, the list goes on and on. These were the children of *Brown* and the conflagration that followed as the United States, sometimes willingly and sometimes not, opened itself to freedom.

Robert Carter, Marshall’s partner on *Brown*, summarized its significance: “As a school case and for desegregation, I think that *Brown* hasn’t done so well. What...makes it a great decision is that it changed the race relations in this country... *Brown* said to black people ‘you are entitled to be equal in this country and you are entitled to be free of segregation.’”

As history, *Brown v. Board of Education* is one of the more recent milestones along the road to equality for all people. It is neither a starting nor a stopping point, simply a brilliant victory along the way. The color bar that *Brown* challenged further diminished in the crucible of national soul searching fueled by the Vietnam War, civil rights action, and the new economic opportunities of the 1970s and ’80s. It opened the door to dignity for all people, no matter what their color, nationality, sexual persuasion, age, or gender. By demanding justice for African Americans whose ancestors arrived on this continent by force, it made visible a path that other Americans seeking parity might walk.

But what *Brown* also teaches us is that the struggle is never over. Freedoms are fragile. Freedoms must be safeguarded by each new generation. They must be safeguarded by us all. *Brown* would have failed had the impetus come only from the LDF. It would have

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failed had the drive for equality been the cry only of parents or preachers or the Supreme Court. *Brown* succeeded because the courage of the people and the courage of the judicial system coalesced. It leaves for all of us a great legacy—and an even greater responsibility—to carry on.

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